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Before the
Federal Communications Commission
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

CC Docket No.
96-45

TENNESSEE STATE DEPARTMENT)	
OF EDUCATION)	Applicant ID No.
)	145698
Application (FCC Form 471))	
for Approval of Funding)	Universal Service Control No.
)	144790000000004

To: The Commission

Administrator, Schools
and Libraries Corporation

OBJECTION TO APPLICATION
AND REQUEST FOR EXPEDITED DECLARATORY RULING

Submitted by:

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INTERNET SOLUTIONS, INC.

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Integrated Systems and Internet Solutions, Inc. ("ISIS 2000"), hereby objects to the above-referenced application being filed by the Tennessee State Department of Education ("Department") and requests that the Commission ("Commission" or "FCC") issue an immediate declaratory ruling pursuant to Section 1.2 of its rules (47 C.F.R. § 1.2) with respect to the lawfulness under FCC rules and policies of several key aspects of the contract for which funding is requested.¹

¹ As the Commission has delegated responsibility for the administration of the funding program to a newly-created corporation, the Schools and Libraries Corporation ("SLC"), this Request is also being directed to that Corporation as Administrator of the program for action insofar as the matters raised herein pertain to processing of the Department's application. The responsibility for resolving questions of compliance with FCC Rules, however, is with the FCC. See SLC Client's Commonly Asked Questions - Set III, released February 24, 1998, Question 16.

I. Introduction and Summary

This Objection and Request for Declaratory Ruling arises out of the announced intent to award by the Tennessee State Department of Education of a \$74,352,941 contract to Education Networks of America ("ENA") for statewide services intended for funding under the FCC's Schools and Libraries Universal Service Fund ("USF") program, established pursuant to Section 254(h) of the Communications Act of 1934, as amended (47 U.S.C. § 254(h)). The Department's Notice of Intent to award the contract (RFP 97-2), issued March 20, 1998 (Attachment A), contemplates the award of a contract to ENA for services to be funded under the USF program over a 3-1/2 year period through December 31, 2001. Under State bidding procedures, the contract is scheduled to be awarded no earlier than April 3, 1998. The Department's Form 471 ("Services Ordered and Certification") Application for USF funding is due to be filed by April 15, 1998.

ISIS 2000 is, at this point, the unsuccessful bidder for the Tennessee contract.² Separately, before the appropriate State authorities, ISIS 2000 is challenging the Department's notice of intent to award the contract to ENA

² ISIS 2000 is a wholly owned subsidiary of Great Universal Incorporated, a member of an affiliated group of international companies led by Industriforvaltnings AB Kinnevik, a publicly traded Swedish corporation established more than 60 years ago. Other members of the Kinnevik group include MIC (telecommunications services), Netcom (telephone, Internet, and data services), Modern Times Group (publishing and broadcasting), and Invik (banking, financial and insurance services).

on numerous grounds, including ENA's lack of financial responsibility, failure to properly consider cost and technical value and inability to perform the contract.

This Objection and Request for Declaratory Ruling does not seek a determination as to these bidding and contractual issues, which are appropriately within the jurisdiction of State authorities. Rather, ISIS 2000 seeks an immediate Commission determination as to the lawfulness for USF funding purposes of certain key aspects of the proposed ENA contract which go to the heart of the proposed selection by the Department of ENA over the proposal submitted by ISIS 2000.

For essentially the same overall scope of services, the pre-discount price proposal submitted by ISIS 2000 is approximately \$23,000,000 lower than ENA's bid.³ ISIS 2000's proposal was determined to be basically acceptable and responsive to the Department's requested technological needs. Nonetheless, ENA's proposal was found by the Department to be substantially preferable cost-wise, due to dramatically higher USF funding projections and the manner in which the acquisition of the Department's existing wide area network ("WAN") equipment is treated for USF funding purposes. This WAN equipment is now used in conjunction

³ To be more specific, ISIS 2000 submitted two alternative proposals, denominated as the backbone proposal (cost - \$51,275,384) and optional proposal (cost - \$50,539,533), the primary difference being whether certain existing Tennessee state network facilities ("TNII") or commercial services are used for some backbone segments. For purposes of this pleading, ISIS 2000 will make comparisons based on its "backbone" proposal.

with a statewide program in Tennessee called ConnectTEN, a wide area network connecting all public schools in the State implemented over the past two years (hereinafter "ConnectTEN").⁴

Simply put, the ENA contract is a fraudulent scheme put together to enrich ENA's principals⁵ at the expense of the Universal Service Fund. The vastly greater cost of ENA's proposal, standing alone, is an extremely serious abuse of FCC rules and USF funding standards. Furthermore, ENA's proposed purchase of pre-existing ConnectTEN facilities from the Department for \$7,500,000, and immediate resale of services over the same facilities back to the Department for \$7,950,000 is a deceptive shell game, which violates FCC rules both through the funding of existing ineligible equipment and by artificially inflating the federal USF contribution. Other significant aspects of ENA's proposal also involve the funding of ineligible equipment or services which further inflates the overall cost of pre-discount services.

⁴ Various newspaper articles describing this network are included in Attachment B. As part of the ConnectTEN project, each public school in the State was equipped with a router and ISDN connection, among other equipment.

⁵ At this time, ENA is little more than a shell organization. It has no more than a few employees, no record of providing the type of services requested in the RFP (except for certain consulting services provided by its principals in establishing the ConnectTEN program) and literally only a few thousand dollars in actual assets. ENA's primary reported asset is approximately \$1.5 million in "long term notes receivable from its members at December 31, 1997," which it claims are due on December 31, 1999. See Attachment C - ENA Balance Sheet.

According to ENA, its proposal involves only the simple sale of basic Internet access services to the Department.

As ENA recently explained to the Department:

Under the Proposal accepted by the State, ENA will provide a defined and equitable service level of Internet access to all public K-12 schools. ENA will provide a point-of-presence in each school, so the school or consortium is purchasing direct Internet access rather than routers, hubs, ISDN, T-1 lines, or similar services or equipment. Similarly, a school or consortium is not purchasing the time of specific personnel.

Internet Access is specifically identified by the FCC as eligible for E-Rate discounts. AOL, for example, or any other independent service provider is not required to disclose and have separately qualified every element of its operation (equipment purchased, personnel activities) which produces the service being purchased.⁶

This deceptively simple view of the transaction elevates form over substance to an amazingly impermissible degree. Behind this deceptive shell, it is ENA, and not the Department, that would ultimately own all equipment installed in each school and at other locations on the statewide network, notwithstanding the full funding of all equipment purchases by the Department and the USF Fund. ENA would, in effect, have the Department and the USF fully fund the construction of a privately held statewide telecommunications and data network paid for out of federal Universal Service funding, in flagrant violation of Commission rules and policy.

⁶ ENA Response to Protest Filed by ISIS 2000, filed with the Tennessee Department of Education March 31, 1998.

II. The Excessive and Needless High Cost of the ENA Contract Violates FCC Rules and Policies

In Attachment D, the Department's overall cost comparisons between the ENA and ISIS 2000 proposals are summarized. As detailed therein, the projected program costs proposed by ENA and ISIS 2000 for essentially the same scope of overall services are substantially different:

BASIC BID COMPARISON

	<u>ENA</u>	<u>ISIS 2000</u>
State and Local Funds	\$17,870,000	\$17,653,709
Other Funds*	7,500,000	295,400
Savings	---	129,616
USF Funds	<u>49,072,941</u>	<u>33,196,659</u>
Total Costs	\$74,352,941	\$51,275,384

*Purchase of existing Department wide area network facilities by service provider

Significantly, while the cost of the ENA proposal is approximately \$23,000,000 (over 45%) higher than ISIS 2000's proposal, the "on the face" cost to the Department is approximately the same (\$17,780,000 for ENA vs. \$17,653,709 for ISIS 2000). To bridge this substantial gap, ENA anticipates receiving approximately \$16,000,000 more in USF funding (\$49,072,941 for ENA vs. \$33,196,659 for ISIS 2000) plus providing on paper an additional \$7,500,000 in other funds. This latter figure represents a purported "payment"

by ENA to the Department for the purchase of the Department's existing ConnectEN WAN equipment.

It was primarily for these cost reasons that the ENA proposal was selected over the ISIS 2000 proposal. Attachment E hereto details the Department's evaluation and contract award standards. Out of the maximum of 30 points that could be awarded for cost considerations, ENA's received the maximum (30 points) whereas ISIS 2000 received only 20.837 points.⁷

As described in Attachment E, the cost criteria used by the Department are not based on the overall cost of the project but rather the relative amount or proportion of funding which may be obtained from the USF program. The criteria award the maximum point credit (30 points) to the bid achieving the greatest percentage of USF funding to the overall cost of the project. In this respect, the Department's RFP requested bidders to assume a continuing level of Department funding of approximately \$5,000,000 per year (the amount now spent on the ConnectEN system) and advised bidders to take the following approach:

The FCC E-rate funding is a very unique opportunity for Tennessee schools to take advantage of very sizeable discounts and spend the currently available recurring dollars to buy significantly more functionality than would otherwise be

⁷ Attachment D hereto details the specific point comparison between ENA and ISIS 2000 on all evaluation factors. As shown therein, the two bidders were roughly equal on qualifications (maximum of 10 points) and experience (maximum of 15 points). ENA, however, received 9.375 points more than ISIS 2000 on technical approach (35.375 vs. 26.0) and 9.167 more points on cost factors (30.0 vs. 20.837).

possible. Therefore it is desirable for proposers to consider creative approaches to this situation, including any purchase of existing equipment, resale or salvage of existing equipment.⁸

Thus, despite its substantially higher pre-discount cost, ENA's bid received a decisive point preference because it provided that the Department would pay a lower proportion of the overall projected costs of the project. ENA, by its own admission, took "very seriously the Department of Education's request in RFP Section 5.2.4.1.3 to prepare a creative approach to enable Tennessee's schools to take advantage of E-rate discounts."⁹ Rather than control the overall costs of the project, this approach rewards the bidder who is able to recover a greater percentage of the overall costs from the USF fund and is a substantial incentive for a bidder to "game" the USF funding process as much as possible.

The ENA contract is a blatant violation of Commission rules and policy requiring the competitive bidding of contracts under the USF program. While Section 54.511 of the Commission's rules (47 C.F.R. § 54.511) gives the educational institution some flexibility to accept a bid based on factors other than lowest cost, this discretion is not unbounded. The lowest pre-discount cost for the services to be provided is the primary objective of the Commission's competitive bidding requirements. As the

⁸ Attachment F - RFP Section 5.2.4.1.3.

⁹ Attachment G - ENA Proposal, p. 7.

Commission explained in its initial Report and Order adopting Section 54.511:

We, therefore adopt the Joint Board's finding that fiscal responsibility compels us to require that eligible schools and libraries seek competitive bids for all services eligible for section 254(h) discounts. Competitive bidding is the most efficient means for ensuring that eligible schools and libraries are informed about all of the choices available to them. Absent competitive bidding, prices charged to schools and libraries may be needlessly high, with the result that fewer eligible schools and libraries would be able to participate in the program or the demand on universal service support mechanisms would be needlessly great. . .

[W]e note that the Joint Board intentionally did not recommend that the Commission require schools and libraries to select the lowest bids offered but rather recommended that the Commission permit schools and libraries "maximum flexibility" to take service quality into account and choose the offering or offerings that meets their needs "most effectively and efficiently," where this is inconsistent with other procurement rules under which they are obligated to operate. We concur with this policy, noting only that price should be the primary factor in selecting a bid (emphasis added).¹⁰

In direct contravention of these basic requirements, the ENA proposal accepted by the Department purposely inflates the pre-discount contract price by approximately \$23,000,000 in order to maximize the federal USF payment and minimize the Department's contribution. Notwithstanding the fact that ISIS 2000's proposal provides for essentially the same overall scope of services, ENA would have the Department accept and the Universal Service Fund pay for services which on a pre-discount basis will be approximately

¹⁰ See Report and Order, In Re Federal-State Joint Board on Universal Service, 12 FCC Rcd. 8776, 9029 (1997) ("Report and Order").

45% higher in cost. Had the Department's process correctly focused on pre-discount price as the primary factor, as required by Commission rules (instead of a proposal designed to maximize USF funding), ISIS 2000's proposal obviously would have been the only possible choice.

A grant of funding to support implementation of the ENA proposal in Tennessee would ultimately cost the USF Fund (and telecommunications service end users who must pay for the USF Fund) approximately \$16,000,000 more than should be required to actually fund the Department's services. The additional subsidies required to pay for the inflated ENA proposal will require the expenditure of millions of additional dollars out of the USF program which should be applied to provide other schools and libraries with much needed new services.

Rather than address this huge discrepancy during the course of the bid process, ENA sought to obscure the question of basic FCC rule compliance. Essentially all that it reported to the Department was the following:

Form 471 provides space to put the number of schools, students and computer expected to be served by the contract. The Schools and Library Corporation is expected to use screens to determine if the contract provides service at or below industry pricing standards. We believe our pre-student, pre-computer and pre-school costs are lower than industry standards and will meet the requirements of the FCC screen."¹¹

¹¹ ENA Proposal, Overview for Screening Purposes. Attached as part of Attachment I (Reviewer Questions for ENA Response to RFP 97-2).

This is not the issue. Even if the SLC had adopted or announced such a screening approach (which it has not), this is not the way in which the FCC designed its rules to control the cost of the program. Rather, the primary purpose of the competitive bidding requirements of Section 54.511 is to ensure that both the school participating in the program and the USF receive the benefit of the lowest marketplace costs for the services received. By obscuring this fundamental requirement during the local bidding process, ENA has misled the Department and compromised the basic integrity of the competitive bidding process required by Section 54.511.

In this case, the ultimate impact is even more egregious when the manner in which the purported purchase of the Department's existing ConnectEN equipment is factored into the equation. As shown hereafter, this is essentially a "wash" transaction in which the Department's existing equipment is purchased for \$7,500,000 and services using the equipment immediately resold during the first six months of the contract (July 1, 1998-December 31, 1998) to the Department for \$7,950,000.¹² Discounting this wash transaction, a truer picture of ENA's actual economic proposal emerges:

¹² In comparison, ISIS 2000's proposal contemplated the purchase of the Department's existing ConnectEN equipment for its estimated salvage value of \$295,400, which ISIS 2000 treats as ineligible services for purposes of USF discounts.

ADJUSTED ENA BID PROPOSAL

(eliminating wash purchase and
resale of existing equipment)

State and Local Funds	\$9,830,000
Other	--
USF Funds	<u>49,072,941</u>
 Total Costs	 59,452,941

In net effect, the Department's ultimate actual out-of-pocket costs are further reduced under the ENA proposal without changing in any way the amount of USF funds to be expended on the project and thus distorting the local/USF funding relationship even more.

The phenomenon is most apparent in the first six months of the contract for which USF funding is now being requested. Attachment H (at H-6) hereto details the financial cost of the ENA contract for each six-month period beginning with the July 1, 1998-December 1998 period. As shown therein, the actual cost to be paid by the Department during this initial period is only \$1,000,000, with \$16,500,000 to be paid out of the USF program. In effect, the projected 66/34% USF/local sharing of costs under the calculated discount is leveraged to an actual 96/4% USF/local sharing of costs. With these basic cost considerations in mind, we now turn to the issue of whether the various creative approaches used by ENA to reach this result comply with fundamental FCC USF funding rules.

III. Key Features of the ENA Contract Violate FCC USF Funding Rules¹³

A. Charges for the Use of Existing ConnectEN Equipment Purchased by ENA

The initial fiscal year of the schools and libraries USF discount program began January, 1, 1998. In the Order on Reconsideration, 12 FCC Rcd. 10095 (1997), the Commission prohibited an eligible school or library from receiving "a federal universal service discount on services provided to it before January 1, 1998." This prohibition encompasses any services provided under the USF program, including internal connections and telecommunications services.¹⁴ The Schools and Libraries Corporation ("SLC") additionally emphasized the prohibition in Commonly Asked Questions - Set III ("CAQ"), released February 24, 1998. In the CAQ, the SLC explained:

¹³ For purposes of this section, the discussion of costs will focus on costs for the first six months of the program (July 1 - December 31, 1998), which are the subject of the Department's application for 1998 funding.

¹⁴ Section 54.502 (47 C.F.R. § 54.502) states:

Supported telecommunications services. - For purposes of this subpart, supported telecommunications services provided by telecommunications carriers include all commercially available telecommunications services in addition to all reasonable charges that are incurred by taking such services. . . .

Section 54.503 (47 C.F.R. § 54.503) states:

Other supported special services. - For the purposes of this subpart, other supported special services provided by telecommunications carriers include Internet access and installation and maintenance of internal connections in addition to all reasonable charges that are incurred by taking such services. . . .

The payment for and delivery of services must occur on or after January 1, 1998 in order to qualify for discounts. . . The original purchase date or service delivery date will govern for purposes of determining whether the service was provided on or after January 1, 1998.

The Commission's policy is clear: In order for internal connection equipment to be eligible for USF discounts, it must be new equipment installed and paid for on or after January 1, 1998, and not equipment which was already installed at a location, used, and paid for prior to January 1, 1998.

Notwithstanding these straightforward rules and policies, the ENA proposal provides for the payment by the Department of \$7,950,000¹⁵ for the use of existing ConnectTEN routers and other associated customer premises equipment ("CPE") which was actually delivered, installed, used and paid for by the Department prior to January 1, 1998. On July 1, 1998, ENA will charge the Department \$7,950,000 for "[b]asic network delivered to all 1600 schools," which "will include an installed router at each school, which will be connected to a computer or a network of computers at the school."¹⁶ This internal connection equipment is, in fact, existing ConnectTEN CPE equipment now in use in each school, and installed and paid for by the Department prior to

¹⁵ As best can be determined from ENA's bid, the amount represents the sum of the \$7,500,00 paper payment for the purchase of the equipment plus the Department's existing maintenance costs (\$450,875) for the six-month period. See Attachment J, which reports an existing annual equipment maintenance cost of \$901,749.

January 1, 1998. Notwithstanding that the equipment is ineligible for USF discounts, the ENA proposal attempts to mask it as new equipment which will be installed in the schools on July 1, 1998.

Furthermore, during ENA's proposed Service Levels 1-8 (July-December 1998), ENA additionally proposes to swap out all the old routers and install new, higher capacity routers, at an additional cost of \$9,750,000. Out of a total six-month cost of the proposed project of \$25,000,000, the contract is in effect inflated by \$7,950,000 to pay for the short-term continued use of the Department's existing router and CPE facilities - a clearly ineligible expense.

As previously indicated, the Department's RFP requested bidders to "consider creative approaches to this situation, including any purchase of existing equipment, resale or salvage of existing equipment"¹⁷ which will maximize the amount of federal USF funding while limiting the Department's costs to its current level of expenditures for the ConnectTEN system (approximately \$5,000,000 per year).¹⁸ ENA's proposal to buy the existing ConnectTEN network equipment from the Department for \$7,500,000 and at the same time charge the Department \$7,950,000 to "install" the equipment is a complete facade which carries the concept of creativity far beyond its lawful boundary. The Commission's

¹⁶ See Attachment J - Reviewer Questions for ENA Response to RFP 97-2.

¹⁷ See Attachment F.

¹⁸ See Attachment J.

rules were not intended to make equipment purchased, installed and paid for prior to January 1, 1998, eligible for funding simply through a "wash" transfer of the equipment to a service provider who will then use the equipment to continue to provide the same services. Condoning ENA's approach would certainly open the floodgates to numerous other service providers in the country attempting to engage in similar schemes.

Furthermore, by artificially inflating the contract price to obtain USF funding for CPE which has already been paid for by the Department, the scheme has the effect of overweighting the level of federal USF subsidy and further minimizing the Department's actual and required monetary contribution. ENA's cost proposal chart included in Attachment F (F-6) shows the actual apportionment of costs ("Sources of Payments") during the first six months (July, 1998 - December, 1998). Out of a total project cost of \$25,000,000 for the first six months, the Department's contribution is only \$1,000,000, while the USF contribution is \$16,500,000, notwithstanding the calculated discount level of only 66%. The following chart illustrates ENA's proposal compared to what the Department's contribution for new equipment and services would be where the \$7,950,000 charge for existing CPE is not included in the contract price:

	ENA Contract Price Including Ineligible \$7.95 Million Charge	Projected Contract Price Excluding Ineligible \$7.95 Million Charge ¹⁹
Federal Contribution	\$16,500,000	\$11,253,000
ENA Wash Contribution	7,500,000	0
State Contribution*	<u>1,000,000</u>	<u>5,797,000</u>
Total	\$25,000,000	\$17,050,000

* based on a 66% discount level

What this boils down to, in essence, is a scheme devised by ENA to defraud the Federal Government in violation of 47 U.S.C. §§502 and 503(b) and 18 U.S.C. §1001, of over \$5,000,000 (the difference between the USF contribution under the ENA proposal and what it should be based on a 66% discount level for \$17,050,000 in new equipment and services). Section 54.504(b)(2)(v) of the Commission's rules (47 C.F.R. § 54.504(b)(2)(v)) specifically requires that the Department have available the full applicable non-discount portion of the contract price to pay the provider for eligible services.²⁰ In contravention of these requirements, ENA has improperly attempted to minimize the Department's contribution and

¹⁹ The \$17.05 million proposal assumes that no other equipment or services under the ENA proposal would be considered ineligible for USF discounts. However, as will be shown hereafter, a substantial portion of proposed new services included in the ENA proposal (and which constitute a significant portion of this \$17.05 million estimate) are for equipment which is not internal connection equipment and is therefore ineligible for USF funding.

²⁰ See Report and Order, 12 FCC Rcd. at 9079 (1997).

maximize the USF subsidy through a wash transaction having no real economic justification.

ENA's proposal is nothing more than a fraudulent scheme to generate excessive profits for its principals at the expense of the USF Fund and numerous schools and libraries in great need of discounts on services. ENA's proposed salvage value purchase price for the existing ConnectTEN internal connection CPE of \$7,500,000 is more than twenty-five (25) times the \$295,400 salvage value which ISIS 2000 placed on the equipment.²¹ Particularly as ENA proposes to begin immediately swapping out substantial portions of the existing CPE in favor of upgraded equipment during the initial six months of the contract term, the exorbitant amount it will pay for and then charge the Department for the use of this obsolete equipment is a very serious violation of USF funding rules.

B. Charges for the Purchase of Non-qualifying New Equipment and Services

In addition, substantial elements of new services proposed by ENA are also ineligible for USF discounts. These include ineligible WAN equipment and support services clearly not covered by USF discounts.

²¹ ISIS 2000 obtained this salvage value estimate from a highly reputable independent third party estimator, CISCO Systems, Inc., a leader in Internet networking equipment. Further, for purposes of anticipated USF discount calculations, ISIS 2000 treated the existing equipment as ineligible services under its proposal.

A list of all eligible services was released by the SLC on February 3, 1998 ("Eligible Services List").²² This list itemizes all eligible telecommunications services and internal connections, and specifically excludes any equipment components of a wide area network.²³ On December 30, 1997, the Commission released the Fourth Order on Reconsideration, CC Docket 96-45, FCCC 97-420 ("Fourth Order"), in which the Commission on its own motion concluded that:

to the extent that states, schools, or libraries build and purchase wide area networks to provide telecommunications, the cost of purchasing such networks will not be eligible for universal service discounts. We reach this conclusion because, from a legal perspective, wide area networks purchased by schools and libraries and designed to provide telecommunications do not meet the definition of services eligible for support under the universal service discount program. See Para. 193.

In the Fourth Order, the Commission also adopted new Section 54.506 of the rules (47 C.F.R. § 54.506), which defines "internal connections" eligible for USF funding as limited to the following equipment:

Internal Connections. - A service is eligible for support as a component of an institution's internal connections if such service is necessary to transport information within one or more instructional buildings of a single school campus . . .²⁴

²² See CC Docket No. 96-45, Schools and Libraries Eligibility List.

²³ The list of eligible services was based on Sections 54.502 and 54.503 of the Commission's Rules previously cited. This list was also updated by a new list released by the SLC on March 28, 1998.

²⁴ 47 C.F.R. Section 54.506. See also the Eligible Services List: "Internal connections are a component of the institution's internal connections only if that piece of equipment is necessary to transport information all the way to the individual classroom," at page 5.

With respect to whether internal connections in school buildings located outside a single school campus setting could be eligible for discounts (which otherwise would be ineligible WAN connections), the Commission carved out a limited exception to Section 54.506 in the Fourth Order.

The Commission concluded that:

discounts would be available for the internal connections installed in a school district office if that office were used as a hub of a local area network (LAN) and all schools in the district connect to the Internet through the internal connections in that office. See para. 210.

This limited exception to the overall restriction on WAN equipment permits a single school district office hub to qualify for USF funding as an eligible "internal connection." However, the exception does not extend eligibility to any other WAN equipment or services at other locations between the school district office and the Internet point of connection. The SLC further addressed the Commission's requirements in the SLC Fact Sheet on Wide Area Networks, released February 24, 1998 ("FAQ"). In the FAQ, the SCL explained:

Discounts will be available on wide area networks only if the services/components can be classified as an eligible service. . . Since wide area networks do not constitute internal connections, the cost of purchasing components/services used for wide area networks will not be eligible for discounts.

In total disregard of these rules and policies, ENA proposes to treat the construction of several "Education Hub

Sites" (called "ESAs" in its bid proposal) as eligible internal connections.²⁵ As discussed in Section A above, the Department's existing ConnectTEN network links together all public schools in the State of Tennessee with numerous other state government or government-related departments and agencies. The equipment on this network currently owned by the Department consists of equipment in approximately 1600 school buildings and equipment in approximately 93 county seats, which apparently are considered aggregation points for each school district and which currently interconnect directly with TNII (the state-wide Internet and data backbone network). On top of this, ENA proposes to build five privately owned major points-of-presence ("POPS") Education Hub Sites located in the State's five LATAs. ENA claims these five Education Hub Sites will be used to aggregate traffic from the 93 county seat aggregation points and proposes to charge the Department a one-time cost of approximately \$1,850,000 to construct the five POPS.²⁶

However, the construction of these privately owned POPS, which potentially could also be used for commercial purposes by ENA, is not eligible for USF support under the above-cited Commission rules and SLC policies. ENA proposes that the POPS will aggregate traffic from the 93 county seat hub sites and interconnect them with TNII, instead of the county seat hub sites directly interconnecting with TNII as

²⁵ See Attachment K, pages 42 and 52 of ENA Proposal.

is the current situation. Even assuming the additional POP aggregation points are necessary (which ISIS does not believe to be the case), they are clearly not eligible internal connections. But for the limited exception for school district office equipment which aggregates traffic and directly passes it off to the Internet (such as is now done by the 93 county seat locations), the rules do not allow service providers to get reimbursed out of the USF for the construction of an additional tier of privately held, strategically placed POPs. To permit USF discount eligibility for these facilities would go far beyond the Commission's funding restrictions on WAN facilities and services.

Further, as part of its overall \$9,750,000 charge to the State for new equipment, ENA proposes to provide approximately 100 caching servers²⁷ during the initial six-month implementation period (July, 1998-December, 1998), at a cost estimated by ISIS 2000 of approximately \$1,500,000. Caching servers are used to collect, update and store Internet content from World Wide Web sites most popularly accessed by multiple PC users on a local area or wide area network.²⁸ Caching servers in no way meet the definition of an internal connection eligible for funding because they are in no way "necessary to transport information within one or

²⁶ See id.; Attachment I (note description of Level 2 and costs estimates on charts).

²⁷ See Attachment K; ENA Proposal at page 41; Attachment I.

²⁸ See Attachment K; Glossary included in ENA's Proposal.

more instructional buildings of a single school campus," as required by Section 54.506. Nor are they listed as an eligible service in the SLC's Eligible Services List.

ENA's six-month proposal also charges the Department for approximately 8,000 hours of ineligible teacher training (56,000 hours over the 3-1/2 year term of the contract), to be provided by a full-time team of eight consultants.²⁹ ENA attempts to mask its charges for teacher training under a deceptive heading for services it labels "ENA School Partners." However, the description of these services in Attachment K can only reasonably be construed to contemplate teacher training:

ENA will establish a team, called the ENA School Partners, responsible for making on-site visits and gathering feedback from teachers. Consistent interaction will insure network services and features are responsive to teacher and student needs.³⁰

Presuming the 8,000 hours is billed at the industry standard rate of \$150 per hour for consulting services, ENA would charge the Department (and pass on to the federal USF fund) approximately \$1.2 million during the first six months of the contract alone for teacher training, an ineligible service.

²⁹ The Commission's rules do not provide funding for teacher training. The Commission concluded that schools and libraries would be required to provide teacher training at their own expense. See Report and Order, 12 FCC Rcd. at 9077-9079. Further, the Eligible Services List specifically states that Teacher Training is not an eligible service.

³⁰ See Attachment K, ENA Proposal at page 44. See also ENA proposal, page 32, attached as Attachment L.